

Message Text

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SCA:TMRECKNAGEL (DRAFT)

L/SCA:ELKERLEY (DRAFT)

EA/RA:WLGALLAGHER (SUBS)

AF:JPBLANE (SUBS) L/SFP:LGFIELDS

ARA:HSHLAUDEMAN (DRAFT)

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TO ALL DIPLOMATIC AND CONSULAR POSTS

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INFORM CONSULS

E.O. 11652: N/A

TAGS: SNAR, CASC, XX

SUBJECT: WELFARE AND WHEREABOUTS: ROLES OF CONSULAR
OFFICERS AND DEA AGENTS WITH RESPECT TO AMERICAN DRUG
OFFENDERS

1. PURPOSE THIS TELEGRAM IS TO UPDATE GUIDELINES FOR
USG PERSONNEL ABROAD IN DEALING WITH U.S. CITIZENS
DETAINED ON DRUG-RELATED CHARGES. CHIEF OF MISSION
HAS FULL AUTHORITY, CONSISTENT, OF COURSE, WITH ESTAB-
LISHED DEPARTMENT POLICY, TO MODIFY THESE GUIDELINES
WHERE, IN HIS JUDGMENT, LOCAL CIRCUMSTANCES REQUIRE
SUCH ACTION. SUCH MODIFICATIONS SHOULD BE REPORTED
TO THE DEPARTMENT. CHIEF OF MISSION AND PRINCIPAL
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CONSULAR OFFICER SHOULD ENSURE THAT ALL ELEMENTS OF
MISSION, ESPECIALLY CONSULAR OFFICERS AND DEA AGENTS,
ADHERE TO THE GUIDELINES ESTABLISHED FOR THE MISSION.

2. IN SUMMARY, DUTIES OF CONSULAR OFFICERS AND DEA AGENTS ARE PARALLEL BUT NOT OVERLAPPING. CONOFF HAS RESPONSIBILITIES EXTEND PROTECTIVE SERVICES WHICH INCLUDE PROTECTION OF CITIZEN'S CIVIL AND HUMAN RIGHTS. DEA AGENT IS LAW ENFORCEMENT OFFICER WITH CERTAIN INVESTIGATIVE AND OTHER RESPONSIBILITIES AS DEFINED IN US STATUTES, INTERNATIONAL AGREEMENTS, AND BILATERAL ARRANGEMENTS. AS OUTLINED BELOW, THEY CAN COOPERATE FOR MUTUAL BENEFITS WITHOUT INTERFERING IN EACH OTHERS

OPERATIONS. FINALLY, IT SHOULD BE FULLY UNDERSTOOD THAT US CITIZENS CHARGED WITH DRUG OFFENSES ABROAD MUST BE AFFORDED THE SAME WELFARE AND PROTECTION SERVICES AS THOSE RENDERED TO CITIZENS CHARGED WITH OTHER OFFENSES.

3. ARRESTS OF US CITIZENS:

A) CONOFF SHALL: (1) TAKE PROMPT, VIGOROUS PROTECTIVE ACTION WITHOUT REGARD TO EVIDENCE OF INNOCENCE OR GUILT, OR THE NATURE OF THE ALLEGED CRIME. (2) IMMEDIATELY UPON LEARNING OF ARREST, ESTABLISH COMMUNICATION WITH CITIZEN, PREFERABLY BY PERSONAL VISIT. INITIAL CONTACT SHOULD BE FOR PURPOSES OF ESTABLISHING CITIZEN'S IDENTITY, MAKING HIM AWARE OF HIS RIGHTS, ADVISING HIM CONCERNING AVAILABILITY OF LEGAL ASSISTANCE, OFFERING TO HELP HIM COMMUNICATE WITH LAWYER, RELATIVES OR OTHERS, AND DETERMINING WHETHER CITIZEN HAS BEEN MISTREATED OR IS IN DANGER OF MISTREATMENT. (3) REPORT APPROPRIATE FACTS TO DEPARTMENT BY TELEGRAM SOONEST AND ALSO NOTIFY LOCAL DEA COLLEAGUE. (4) SUBMIT TELEGRAPHIC REPORTS TO DEPARTMENT OF SIGNIFICANT SUBSEQUENT DEVELOPMENTS.

B) DEA AGENTS MAY SOMETIMES LEARN OF THE ARREST BEFORE HOST GOVERNMENT AUTHORITIES OR OTHERS HAVE NOTIFIED CONOFF. IN ANY CASE THEY, OR ANY OTHER USG PERSONNEL, UPON LEARNING OF AN ARREST OF AN AMERICAN CITIZEN, WILL LIMITED OFFICIAL USE
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NOTIFY CONOFF AS SOON AS POSSIBLE OF THE ARREST TOGETHER WITH ANY OTHER DETAILS OF THE MATTER HE DEEMS PERTINENT.

C) UNDER NO CIRCUMSTANCES SHOULD ANY USG REPRESENTATIVE TOLERATE CRUEL OR INHUMAN TREATMENT OF AMERICAN PRISONERS BY FOREIGN OFFICIALS. IF SUCH ACTION SHOULD OCCUR, THE USG REPRESENTATIVE SHOULD PROTEST, WITHDRAW IN A DEFINITIVE FASHION IF HE IS PRESENT, AND PROMPTLY INFORM THE CHIEF OF MISSION. (FYI: DEA AGENTS HAVE LONG BEEN UNDER STRICT INSTRUCTIONS TO AVOID SITUATIONS INVOLVING TORTURE OR OTHER INHUMAN TREATMENT OF PRISONERS WHICH IS AGAINST US LAWS AS WELL AS THOSE OF MOST COUNTRIES.)

4. VISITS TO DETAINED CITIZENS:

A) CONSULAR OFFICERS HAVE THE RESPONSIBILITY FOR PERIODICALLY VISITING US CITIZENS UNDER DETENTION ABROAD IN ORDER TO PROVIDE APPROPRIATE PROTECTION AND ASSISTANCE.

B) IF DEA AGENT OR ANY OTHER USG OFFICIAL HAS CONTACT

WITH US CITIZEN UNDER DETENTION, HE MUST IDENTIFY HIMSELF BY NAME AND AGENCY REPRESENTED AND INFORM THE CITIZEN OF PURPOSE OF HIS VISIT.

5. INTERVIEWS WITH OR INTERROGATION OF DETAINED CITIZENS:

A) CONSULAR OFFICER SHOULD NOT ATTEMPT TO QUESTION A DETAINED AMERICAN REGARDING HIS POSSIBLE PARTICIPATION IN OR KNOWLEDGE OF CRIMINAL ACTIVITIES AND SHOULD STRICTLY AVOID DISCUSSIONS INVOLVING INNOCENCE OR GUILT UNLESS NECESSITATED IN EFFORTS TO PROTECT THE CITIZEN'S CIVIL AND HUMAN RIGHTS.

B) DEA AGENTS HAVE A RESPONSIBILITY FOR INVESTIGATIVE ACTIVITIES ABROAD RELATED TO VIOLATIONS OF US DRUG LAWS. SINCE CERTAIN PROVISIONS OF US LAWS ARE IN EFFECT EXTRA-TERRITORIAL (21 USC 959), DEA AGENTS MAY HAVE A LEGITIMATE INTEREST IN QUESTIONING AMERICAN CITIZENS DETAINED ABROAD ON NARCOTICS CHARGES AS THEY WOULD HAVE IN US TERRITORY.
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HOWEVER, DEA AGENTS SHOULD IN EACH CASE OBTAIN PERMISSION FROM HOST GOVERNMENT AUTHORITIES THROUGH REGULAR DEA LIAISON CHANNELS AND, IN CASE OF REFUSAL, THEY MAY NOT INSIST ON ACCESS TO PRISONERS. WE ENVISAGE SITUATIONS IN WHICH DEA OFFICIALS MIGHT INTERVIEW OR PARTICIPATE IN INTERROGATIONS OF AMERICANS. THE FIRST IS WHEN THE DEFENDENT IS HIMSELF OF SIGNIFICANT IMPORTANCE TO US DRUG ENFORCEMENT ACTIVITIES; IN SUCH CASES, US NATIONAL INTEREST WOULD BE SERVED BY DEA PRESENCE IF OTHERWISE APPROPRIATE IN THE LIGHT OF LOCAL CIRCUMSTANCES. THE SECOND WOULD INVOLVE INSTANCES IN WHICH SOME US AUTHORITY (BUT NOT REPEAT NOT CONOFF) MIGHT WISH TO HAVE QUESTIONS POSED TO A PRISONER HELD ABROAD AND DEA PRESENCE MIGHT BE APPROPRIATE TO ASSURE THAT THE RESPONSES THERETO ARE ACCURATELY INTERPRETED AND TRANSMITTED.

C) A THIRD SITUATION COULD DEVELOP IF DEA WERE ASKED BY LOCAL ENFORCEMENT OFFICIALS TO ASSIST AS AN INTERPRETER IN AN INFORMAL INTERROGATION, AS A FAVOR TO THEM. WE ENVISAGE THAT IN THE SPIRIT OF COOPERATION AND ON

THE BASIS OF RECIPROCITY DEA WOULD SOMETIMES BE INCLINED TO COMPLY WITH THE REQUEST. THIS THIRD SITUATION WOULD APPEAR TO BE THE LEAST COMPELLING AND POSSIBLY THE LEAST PRODUCTIVE OF THE THREE. IF THE DEA AGENT DOES COMPLY WITH THE REQUEST REGARDING AN ARRESTED AMERICAN CITIZEN, HE SHOULD CLEARLY IDENTIFY HIMSELF TO THE DETAINEE AND OBTAIN THE DETAINEE'S CONSENT. WHEN DEA AGENTS ARE PRESENT AT AN ARREST OR INTERROGATION SITUATION (INCLUDING WHEN SERVING AS AN INFORMAL INTERPRETER),

THEIR STANDING INSTRUCTIONS ARE TO MAKE A WRITTEN REPORT WHICH WILL, OF COURSE, BE AVAILABLE IN CASE OF FUTURE NEED BY THE US GOVERNMENT. DEA HEADQUARTERS DESIRES DEA AGENTS NOT SERVE AS OFFICIAL INTERPRETERS IN FORMAL PROCEEDINGS BECAUSE THE LOCAL AGENCIES SHOULD UTILIZE THEIR OWN PERSONNEL.

6. PRESENCE OF DEA AGENTS AT ARRESTS INVOLVING AMERICANS. A SEPARATE TELEGRAM ADDRESSES THE QUESTION OF THE PRESENCE OF DEA AGENTS AT ARRESTS OUTSIDE THE UNITED STATES.

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7. SITUATIONS IN WHICH DEA PROVIDES CRIMINAL INVESTIGATIVE INFORMATION TO FOREIGN AUTHORITIES:

A) NOTIFYING FOREIGN POLICE AGENCIES OF DRUGS IN TRANSIT. THE UNITED STATES IS A PARTY TO THE SINGLE CONVENTION ON NARCOTIC DRUGS (1961) AND IS OBLIGATED TO ASSIST OTHER PARTIES TO THE CONVENTION IN THE CAMPAIGN AGAINST THE ILLICIT TRAFFIC, AS WELL AS TO ENSURE THAT US COOPERATION IN FOREIGN COUNTRIES IS CONDUCTED IN AN EXPEDITIOUS MANNER. FURTHER, MOST COUNTRIES HAVE PROVISIONS AGAINST ANY PERSON UNLAWFULLY EXPORTING ILLICIT DRUGS DESTINED TO ANOTHER COUNTRY. THEREFORE, DEA AGENTS ARE OBLIGED TO NOTIFY A HOST COUNTRY OF ANY PERTINENT INFORMATION CONCERNING DRUGS BEING SMUGGLED THROUGH OR OUT OF THAT COUNTRY, EVEN IF AN AMERICAN CITIZEN IS INVOLVED. FAILURE OF DEA TO DO SO WOULD CONSTITUTE A BREACH OF THE INTENT AND PURPOSE OF THE COOPERATIVE MEASURE OF THE SINGLE CONVENTION AND WOULD RAISE QUESTIONS WITH THE HOST COUNTRY AS TO THE SINCERITY OF THE US REQUEST TO PREVENT DRUG TRAFFIC TO THE UNITED STATES. (FYI: THE TRANSIT LOUNGE OF AN INTERNATIONAL AIRPORT IS WITHIN THE FULL JURISDICTION OF THE LOCAL GOVERNMENT.)

B) PRE-ARREST INVESTIGATION. THROUGH NORMAL INTERPOL CHANNELS (OR VIA DEA AGENTS ON A POLICE-TO-POLICE BASIS), LAW ENFORCEMENT AUTHORITIES OF OTHER GOVERNMENTS MAY OBTAIN BACKGROUND INFORMATION ON AMERICAN CITIZENS SUSPECTED OR CRIMINAL ACTIVITIES ABROAD. THIS IS A

NORMAL POLICE INVESTIGATIVE ACTIVITY, AND BOTH FEDERAL AND STATE AS WELL AS LOCAL US LAW ENFORCEMENT AGENCIES (INCLUDING DEA ABROAD) MAY FURNISH INFORMATION IN RESPONSE TO SUCH REQUESTS DIRECTLY TO THE APPROPRIATE AGENCY OF THE OTHER GOVERNMENT.

C) PRE-TRIAL INVESTIGATIONS. AS DISCUSSED IN PARA 7(A), WE HAVE OBLIGATION UNDER ARTICLE 35 OF THE 1961 SINGLE

CONVENTION TO COOPERATE CLOSELY WITH OTHER PARTIES IN A COORDINATED CAMPAIGN AGAINST THE ILLICIT TRAFFIC AND, WHEN REQUESTED, TO TRANSMIT PAPERS FOR PURPOSES OF LIMITED OFFICIAL USE
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PROSECUTION IN AN EXPEDITIOUS MANNER. DEA CAN MEET THIS REQUIREMENT LOCALLY ON A POLICE-TO-POLICE BASIS IN A TIMELY FASHION. HOWEVER, SINCE CONSULAR OFFICERS ARE PRIMARILY RESPONSIBLE FOR PROTECTING THE RIGHTS OF US CITIZENS ABROAD AND ARE NOT AUTHORIZED TO PROVIDE INVESTIGATORY SUPPORT, REQUESTS MADE VIA THE FOREIGN MINISTRY TO THE EMBASSY SHOULD BE DIRECTED TO THE DEPARTMENT, FOR SCA AND LEGAL ADVISOR'S OFFICE, WITH AN INFORMATION COPY TO DEA HEADQUARTERS. (FYI: ALTHOUGH SUCH REQUESTS ARE HANDLED ON CASE-BY-CASE BASIS, THE DEPARTMENT HONORS THE REQUEST IN MOST INSTANCES.)

D) PRE-SENTENCING INFORMATION. FOLLOWING CONVICTION OF US CITIZEN ABROAD, THE PRESIDING MAGISTRATE MAY REQUEST INFORMATION CONCERNING AN INDIVIDUAL'S PRIOR CRIMINAL RECORD BEFORE PRONOUNCING SENTENCE. IN RESPONSE TO SUCH REQUESTS, GENERAL BACKGROUND INFORMATION SHOULD BE PROVIDED TO FOREIGN AUTHORITIES IN ACCORDANCE WITH ARTICLE 35 OF THE SINGLE CONVENTION. ARTICLE 36 OF THE SINGLE CONVENTION PROVIDES THAT "FOREIGN CONVICTIONS FOR (NARCOTICS) OFFENSES SHALL BE TAKEN INTO ACCOUNT FOR THE PURPOSE OF ESTABLISHING RECIDIVISM." THE EMBASSY'S ACCEPTANCE OF SUCH REQUESTS AND RESPONSE SHOULD NOT BE HANDLED BY CONOFFS.

8. PUBLIC DISSEMINATION OF INFORMATION AND RIGHT TO PRIVACY. IN RESPONSE TO INQUIRIES AS TO REASONS FOR THE CITIZEN'S DETENTION WHICH MAY BE MADE BY FRIENDS, RELATIVES, MEMBERS OF CONGRESS, JOURNALISTS, OR BY ANY OTHER PERSON OUTSIDE THE USG EXECUTIVE BRANCH, CONSULAR OFFICERS SHOULD GENERALLY REFRAIN FROM GOING BEYOND THE OFFICIAL SPECIFICATION OF CHARGES PREPARED BY APPROPRIATE AUTHORITIES OF HOST GOVERNMENT. INFORMATION RECEIVED FROM OTHER USG SOURCES CONCERNING A DETAINED US CITIZEN SHOULD NOT BE COMMUNICATED BY CONOFF TO PERSONS OUTSIDE THE EXECUTIVE BRANCH OF THE USG, UNLESS SUCH INFORMATION IS ALREADY A MATTER OF PUBLIC RECORD. KISSINGER

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